

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5844 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

IQBAL NOORMAHMAD SHAIKH

Versus

COMMISSIONER OF POLICE

Appearance:

MS DR KACHHAVAH for Petitioner

MR HH PATEL, AGP, for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 23/11/1999

ORAL JUDGEMENT

1. The petitioner came to be detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 [for short, 'the PASA Act'] by virtue of an order passed by Police Commissioner, Ahmedabad city on 12th February 1999 in exercise of powers under sub-section [1] of section 3 of the PASA Act.

2. The detaining authority in the grounds of

detention considered that three offences under the Bombay Prohibition Act are registered against the petitioner / detenu. That he is a bootlegger he and would fall within the definition of bootlegger as defined u/s 2[b] of the PASA Act. The conduct of the petitioner has resulted into disruption of public order. The witnesses are afraid of him and are therefore not prepared to disclose their identity and have not therefore lodged the complaint. The detaining authority, therefore, in exercise of powers u/s 9[2] of the PASA Act, refused to disclose the identity of the witnesses claiming privilege. Recording subjective satisfaction, the detaining authority concluded that the detention under the PASA Act is the only remedy for preventing the petitioner from pursuing his illegal and anti social activities.

3. The petitioner has challenged the detention order on various grounds, one of which being that the detaining authority has not considered, while passing the order of detention, the possibility of resorting to a less drastic remedy in the nature of cancellation of bail granted to the petitioner.

4. Ms. Kachhawah, learned Advocate appearing for the petitioner has restricted her arguments to this ground alone and submitted that this would be a clear case of non-application which would vitiate the order of detention and the same, therefore, may be quashed and set aside by allowing this petition.

5. Mr. H.H.Patel, learned AGP for the respondents has opposed this petition and submitted that the detaining authority has considered all relevant factors and after recording subjective satisfaction, has passed the order. Therefore, it may not be interfered with.

6. Factually, a plain perusal of the order of detention and the grounds of detention indicate that the detaining authority has not considered the possibility of resorting to a less drastic remedy in the nature of resorting to section 437[5] of the Code of Criminal Procedure for cancellation of bail. This is a clear non-application of mind, as has been held by the Division Bench of this Court [Coram : C.K.Thakkar & A.L.Dave, JJ] in Letters Patent Appeal No. 1056/99 in Special Civil Application No.8650/98 in case of Yunusbhai Hasanbhai Ghanchi v/s District Magistrate, dated 15th September, 1999.

7. In view of above, the petition deserves to be allowed on this ground alone and the same is allowed

accordingly. The impugned order of detention passed by the Police Commissioner, Ahmedabad city, Ahmedabad on 12th of February, 1999 in respect of the petitioner Iqbal Noormohmed Shaikh, is hereby set aside. The petitioner be set at liberty forthwith, if not required to be detained in custody for any other case. Rule is made absolute accordingly with no orders as to costs.

[A.L.DAVE, J.]

parmar*